

No 15.

the same way as a tutor or curator, which the LORDS sustained not, these being special privileges of pupils and minors against their tutors or curators only.

Fol. Dic. v. 1. p. 160. Stair, v. 2. p. 733.

1706. January 16.

ALEXANDER AITKEN of Middlegrange, *against* JAMES GOODLET of Abbots-
haugh.

No 16.

Annualrent
of a child's
portion, com-
pensated with
her aliment
while she
lived in her
father's fa-
mily.

IN the action at the instance of Alexander Aitken of Middlegrange, against James Goodlet of Abbotshaugh, his wife's father, for the annualrent of her portion from the sixteenth year of her age till her death;

Alleged for the defender, Absolvitor from any annualrent till his daughter's marriage; because, till then he had alimeted her *in familia*, which compensated the annualrent for so long; and as to annualrents during the marriage, compensation by the expenses of her funeral debursed by the defender conform to a stated account.

Duplied for the pursuer, *imo*, Had the defender's daughter assigned the annualrents of her portion for an onerous cause, or her creditor arrested them, the defender could not have compensated upon the aliment not liquidated before the arrestment, or intimation of the assignation; therefore, *a pari*, the pursuer being assignee *jure mariti*, and his assignation intimated by the marriage, he cannot be put off with compensation upon a debt neither liquidated nor constituted to this day, especially such a general debt as aliment, which differs so vastly in different cases, as to the manner, quantity, and quality; *2do*, If the compensation be sustained, the pursuer takes it off by recompensation upon the principal sum yet resting to his deceased wife; *3tio*, No compensation can be obruded to the pursuer upon his wife's funeral expenses, which must burden her executors to whom she has left means sufficient to defray the same.

Duplied for the defender, It is certain that the annualrent before the marriage was in place of the aliment; and the pursuer, by his *jus mariti*, could be in no better case than his wife, if she had pursued for annualrent after her age of sixteen.

THE LORDS found, That so long as the pursuer's wife was unmarried, and *in familia* with her father, her aliment compensated the annualrent; but that the funeral expenses affect her executors. *See HUSBAND and WIFE.*

Forbes, p. 72.

1715. February 9. GORDON of Badinscoth *against* GORDON of Inverebry.

No 17.

A relict, exe-
cutrix to her
husband, and
tutrix testa-

My Lady Kinnaird having been executrix to the late Earl of Aboyne, her first husband, and tutrix-testamentar to the present Earl, and by virtue thereof